

STATEMENT OF JURISDICTION AND INDEX TO POINTS IN THE PETITION

- 1 The Three Court judgment of dismissal rendered at Louisville April 16, 1938, is void for the following reasons:
 - (a) The court could render no judgment out of the Eastern District.
 - (b) The court decided that petitioners had an adequate remedy at law. (Single Judge denied it).
 - (c) This action had precedence of the state suit.
 - (d) Must be rendered by single Judge.
(Paragraph 1, page 1 and 2)
- 2 United State District Court for the Eastern District had jurisdiction.
 - (a) No service on the Central Distributing Company, Inc.
 - (b) No service on the trustee.
 - (c) Trustee not a party to the action.
 - (d) Franklin Circuit Court was without jurisdiction.
(prison penalty).
(Paragraph 2, page 3)
- 3
 - (a) State could not attach assets in the hands of a trustee under Kentucky law.
 - (b) Summons issued to service agent not served.
 - (c) Import taxes violate Article 1, Section 8, 14th Amendment, and Article 3, of the Bill of Rights of Kentucky.
 - (d) Mortgage foreclosure of \$3000 or more must be adjudicated or there is a denial of due process and an impairing of contract rights.
(Paragraph 3, page 4)
- 4
 - (a) The consumers' tax attempted to be collected violates sections 171, 172, and 174 of the Constitution of Kentucky, and Article 1, Section 8, of the United States Constitution
 - (b) State auditor must be a party to the action. (145 Kentucky Statute).
 - (c) Foreclosure the main action—injunction ~~claim~~ incidental.
- 5 The tax act of 1936—April 30—controlled tax and controlled parties to the action, which was the auditor, not the revenue commissioner (see 112—1—5, Kentucky Statutes). (Sec 10, 1934 Acts).
(Paragraph 5, page 5)
- 6 Denial of Jury—USCA 780. Rule 25.—Jurisdictional in Campbell County, not Franklin County.
(Paragraph 6, page 6).
- 7 Motion for judgment April 11, 1938.
(Paragraph 8, page 7)
- 8 Judgment at Louisville void.
(Paragraph 9, pages 7 and 8)
- 9 No findings of fact.
(Paragraph 11, page 8)

- 10 Collection of penalties ceased under repeal of the Act of 1934.
(Paragraph 12, pages 8 and 9)
- 11 Act of April 30, 1936 and 1938 void. (Unconstitutional.)
(Paragraph 13, page 9)
- 12 Refusal of the United States District Court to examine jurisdiction or hear a jury trial.
(Paragraph 14, page 9)
- 13 Denial of due process, denial of appeal, denial of mandamus, refusal to docket and try the issues, denial of due process and equal protection of the laws; refusal to strike the name of J. W. Martin, and attorneys, resigned officer, denial of due process.
(Paragraph 15, page 10)
- 14 Denial of jury trial under Judicial Code, Section 773, on controverted issues. Denial of equal protection of the laws of Kentucky. Section 20, 509 Code.
(Paragraph 16, page 11)
- 15 Double collection of import taxes—contrary Kentucky Law and Article 1, Section 8.
(Paragraph 16, page 11)

B R I E F

Authorities on page 12, section 238, concerning writ of Certiorari. On pages 12, 13, 14, 15, and 16 are the authorities showing that the judgment of April 16, 1938, is void as to the merits, and merits must be tried.

On page 17 are citations showing the right of a single taxpayer to collect either as assignor or assignee or both or one for all. Page 18, Prayer.

Substitution of revivorship. If none in six months, judgment void. United States Rule 25. Not made within twelve months, judgment void; if entered without revivorship, void. (Ky.)

Asher vs. Fordson Coal Co., 249 Ky. 498.

Fordson Coal Co. vs. Jackson, 7 Fed. (2) 117.

Attorneys of record could not appear—not attorneys for auditor. Sec. 10, Act of 1934. 145—112 Ky. Statutes.

SECTION OF THE JUDICIAL CODE U. S. A.

Judicial Code, 238.

Annotated, 345.

Judicial Code, 237.

Annotated, 344.—5.

Judicial Code, 57.

Annotated, 118.

Digest of Brief---Record

1. The U. S. District Court had no jurisdiction to render judgment of dismissal in Louisville, Aug. 16th, 1938. Business of \$870,000 destroyed by seizure. (Annually).

2. The cause of action ceased as to the defense of the action, because, the action should have been defended by the Auditor, not by Martin, Revenue Commissioner of Kentucky.

3. And if defended by Martin his defense ceased July 1st, 1939, by resignation, and no revivor was ever made.

4. Therefore Summary Judgment should have been sustained.

5. If by chance Martin, Revenue Commissioner was held a party, the merits of the action have never been determined. This right is present and these issues remain in the cause.

6. Any judgment on the merits without jury trial is void on common law issues, and so here, where jury was demanded under Kentucky Statute.

7. Motion for judgment, April 11, 1938, must be passed on, and no pleadings can be filed or action taken until it is passed on.

9. The only issue now before the court is the petition, with motions for judgment, summary judgment and trial of damage issue. All issues stand admitted.

10. The original suit in the state court, was without jurisdiction of the Res, and Sheriff is liable on his bond for attachment. Because the Franklin Circuit Court had no jurisdiction of the subject matter or parties, no officer or agent required by Kentucky Code was served.

11. Harry Bayer, Trustee was never served, and not a party to the action; being a necessary party, the orders of the court are void as to the property-no attachment can be run against property in the hands of a bailee or trustee in Kentucky. Sec. 299 Ky. Code.

Issues Deemed Conclusive by attorney
appearing for Central Distributing Co.
Respectfully submitted,

GEO. E. WHITMAN,

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SUPPLEMENTAL BRIEF FOR WRIT OF CERTIORARI

RECORD OF LAW IN CONNECTION WITH STATEMENT OF JURISDICTION AND NECES- SARY RECORD TO DETERMINE THE ISSUES (Combined)

1. *Jurisdiction*.. Section 237-8 and 240 A, Judi-
cial Code.

Right of substitution of parties defendant or
plaintiff. *Rule 25, Supreme Court Rules (d)*. Act
of February 13, 1925, Chapter 229, Section 11. Title
28, Section 780 U. S. C. (Six months clause).

2. Findings necessary for court to make. Rule
52. Certified to the Appellate Court under Rules
75 and 76. *None Made*.

Mandatory. *Humphries vs. Helgerson*, 78
Fed. (2) 484.
Interstate Circuit vs. U. S.,
304 U. S. 55.

3. Foreclosure of Mortgage. Section 57, Judicial Code, Title 28, provides that the United States courts may enforce mortgage liens.

Trustee must be made party, or bailee, under the laws of Kentucky. Section 299 Code.

Section 238, Judicial Code 237-8-240-a, provides for appeal by certiorari. Default for 6 months pleading. Rule 60.

Determination of an injunction without the trial of issues on the merits makes a judgment void on the merits, and denies the right of trial by jury, impairs the obligation of contracts, denies due process of law, and the equal protection of the laws. National Fire Insurance Co., vs. Thompson, 253 U. S. 331, 338; Meccano, Ltd., vs. John Wanamaker, 235 U. S. 136, 141; Smith Vulcan Iron Works, 165 U. S. 518, 526.—204 U. S. 632.—(Smithers vs. Smith).

4. A mandate without directions to determine the merits does not *permit the district court to deny hearing on the merits*. Gulf Refining Co. vs. U. S. 269 U. S. 125, 126; Houston vs. Williams, 13 Cal. 24, 27; Adams vs. Yazoo & M. V. R. Co., 77 Miss. 194, 304; Craig vs. Bennett, 158 Ind. 9.

5. *Order dismissing on application for injunction is not a determination of the merits.*

NOTE: SEE RECORD FOR GROUND OF ARGUMENT. Petition C. Co. 47.

Wells Fargo Co. vs. Taylor, 254 U. S. 175

Metropolitan Water Co. vs. Kaw Valley, 223 U. S. 519

Mutual Life Ins. vs. Hill, 193 U. S. 551, 553.

NOTE:—(Pet. C. Co. refers to Central Co. page).

Smith vs. Adams, 130 U. S. 167, 177.
 Sprague vs. Ticonick Bag Co., 307 U. S. 166.
 Ex-Parte Century Indemnity Co., 305 U. S. 354
 In Re. Sanford Fork & Tool Co., 160 U. S. 247
 Witters vs. Sowles, 33 Fed. 590.
 Barry vs. Edmunds, 116 U. S. 565.
 Chandler vs. Neff 298 F. 518.
 I. C. R. R. vs. Com. (1) Fed. (2) 805
 Marshall vs. Holmes, 141 U. S.
 Ex Party Simons, 208 U. S. 144
 Simons vs. So. R. R. Co., 256 U. S. 115
 Rogers vs. Hill, et al, 289 U. S. 588
 DeRees vs. Costaguta, 254 U. S. 170
 Merriam & Co. vs. Sallfield, 241 U. S. 226
 Swift vs. Inland Navigation Co., 234 Fed. 375
 O'Keiffe vs. New Orleans, 273 Fed. 560 and 280
 Fed. 92
 City vs. McLaughlin 9K Fed. (2) 390.

6. Defendants' motion to dismiss transfers the case to the law side, if sustained.

Collins vs. Bradley Co., 227 U. S. 199
 Brown vs. Kassover, 255 Fed. 806
 Edward Lumber Co. vs. Stone, 258 Fed. 782

The equitable issue must be disposed of first, and then the common law issues.

Scott vs. Neely,, 140 U. S. 106
 Union Pacific Co. vs. Syas, 246 Fed. 561
 National Bank case, 260 U. S. 235

Liberty Oil case, 260 U. S. 236

Albert vs. Basconi, 245 Fed. 149

Investors Ins. Corp. vs. Luikary, 5 Fed. (2)
793

The *last twenty cases* were presented to the United States District Court and the Circuit Court of Appeals.

7. Judgment of the United States District Court is void unless it determines the issue of jurisdiction in the State Court and makes findings for said jurisdiction. Merrian & Co., vs. Sallfield, 241 U. S. 226.

No service of summons in this case.

Duncan vs. Wickliffe, 61 Ky. 118.

Hearne vs. Hander, 56 Ky. 479, Section 1358
Carrol's Code of Ky., Sec. 76.

Case vs. Mill—156 Ky. 628

Hughes vs. Hardesty 13 Bush 364

Ky. Statute Sec. 470, 472, 2554, Code 39.

Smith vs. Dunghey 178 Ky., 702

Ernst vs. Pike 232 Ky. 680.

Summons must be issued and served before attachment is valid. Sec. 2524 Carroll's Statutes.

Summons must be filed and served, and attachment cannot be filed until at or after the commencement of an action. Sec. 39, Code of Practice of Kentucky; Redmond vs. Underwood, 101 Ky. 190; Nolle vs. Thompson, 60 Ky. 123.

An action shall be deemed to be commenced at the date of the summons, otherwise not at all. Sec-

tion 2554 Carroll's Statutes; Code 367; Cape vs. Cape, 136 Ky. 687.

Section 39 and 194 of the Code provides that attachment cannot issue before summons.

Summons must be served on an officer of the corporation or the service agent.

Hall & Head vs. Grogan, 78 Ky. 11

Duncan vs. Wickcliffe, 61 Ky. 118

Scott vs. Dungey, 17 B. M. 70

Simpson vs. Antrobus, 260 Ky. 641

There is no action pending until a summons is served.

Casey vs. Newport Milling Co., 156 Ky. 623

L. & N. vs. Napier, 230 Ky. 323

Shepherd vs. Moore, 1 Medcalfe 97

Cowherd vs. Hardin, 7 Ky. 217

McCord vs. Barker, 8 Ky. 790

Henry Farris, Exrs. Emily Rowland,
8th Ky. Opin. 886

Mattingly vs. Sims, 8th Opin. 167

Sally vs. Brown, 8th Opin. 887

Green vs. City of Covington, 83 Ky. 416

Moore vs. Harrod, 101 Ky. 248

No summons was served, and the attachment was not served on an officer of the corporation or service agent. *The United States District Court refused to examine this question.*

7. *Void Order.* THE ORDER OF THE COURT TRANSFERRING THE CASE FOR HEARING BE-

FORE THREE JUDGES IN THE CITY OF LOUISVILLE RENDERED THE JUDGMENT VOID, Apr. 16, 1938.

Case vs. United States, 14 Federal (2) 510

In Re Briggs, 15 Fed. (2) 88

Bland vs. Kenamer, 6 Federal (2) 130

Section 15, Judicial Code II

Special Judge may be designated "within the territory" of the regular judge, section 18 Judicial Code (amended 14). To decide all such matters submitted to him "within such district" (Judicial Code 18).

Judicial Code 83, defines the limits of the district to be in certain named counties composing district.

Revised Statutes, U.S. section 581, defines power, not judicial out of the district.

The universal decision is that courts have no power beyond their districts and Judges none, except on orders of the Supreme Court, which limits such special judges to the district where sent.

The Judgment of dismissal was void, and the order removing the cause to the western district at Louisville for hearing is a non jurisdictional void order-hence no final judgment even on determining the injunction was rendered.

TAXPAYERS MAY SUE FOR ALL (In Ky.)

8. The Kohns might sue for all of the taxpayers without naming them, in Kentucky, under the Kentucky decisions. 61 S. W. 35.

In the case of *Whaley vs. the Commonwealth* (a non resident) the Court of Appeals held *Whaley* could sue for all the taxpayers in Fleming County in the same tax paying class.

Orear Case, 23 Law Reporter (1912)

Com. vs. Scott, 80 Ky. 498

Commonwealth vs. Wiggins 112 Ky. 252
(one sued for all)

Oswald vs. Morris 92 Ky. 48

Commissioners vs. Weiss, 269 Ky. 554

Blair and Carlisle vs. Turnpike Co. 157 Ky.
also 4th Bu

Fordson Coal Company vs. Jackson 249 498

Burchett vs. Clarke 109 S. W. 888 (Ky.)

Randolph vs. Lampkin 90 Ky. 556

La Point vs. O'Malley, 2 N. W. 632

Murphy vs. O'Reilly, 263 Ky—

Assignments might be made after suit is brought under a different section of the Code where substitution was made for assignee who owned claim before suit.

(9) *The Act of 1934. Kentucky Alcohol Control Act-March 17th.*

This Act created the Central Distributing company and licensed it to sell whiskey as a beverage in violation of Amendment 7 of the Constitution (total prohibition under 18th Amendment).

Section 2 pg. 48 provides the taxpayers may sue, through its agent *the Auditor of the State* for illegal taxes collected in the "State or Federal Courts." Act 1934.

If the state sues an individual for taxes how is it? Section 10, defines: Act 1936, April 30.

"On the failure of any person, liable therefor, to pay the taxes imposed herein within fifteen days after the same has become due, he or they shall be deemed delinquent, and a penalty of 20 per cent on the amount of license tax due and the Auditor shall at once cause such proceedings for the collection of such license with such interest and penalties as may be provided for other collection of taxes."

Section 12; Auditor shall draw his warrant; Green book; penalties imprisonment section 22, 1934 Act.

10. The Circuit Court of Franklin County had no jurisdiction, and the Federal court could have none. Section 976 of Carroll's Stat.

Statute (limiting the jurisdiction of the court to civil actions to enforce penalties). Public offense of which the only punishment is a *fine* may be prosecuted by penal action under Section 11, of the Criminal Code in the manner for civil actions.

The action here to collect penalties was by James W. Martin, *the wrong party*, Section 10 of the 1934 Alcohol Beverage Control Act (original printing) provided for a penalty of one year imprisonment in addition to the fine. It became a criminal penalty enforceable where the offense was committed, the sale of unstamped liquor in Campbell County.—*The sale of unstamped liquor, same act.*

An action which requires a plea of "not guilty" (as in this case); is not such an action as may be brought under Section 11 of the Criminal Code. See

Section 699 Carroll's Code, Title 1, and authorities, as follows: (No jurisdiction in Franklin Circuit Court).

L. & N. vs. Commonwealth, 112 Ky. 640

Com. vs. Avery, 77 Ky. 625

Morrell vs. Com., 129 Ky. 739-40

Helm vs. James, 129 Ky. 239

Com. vs. Long, 30 S. W. 629

Com. vs. Building Loan 30 S. W. 627

"The offense consisted of carrying on a business in violation of law—the action accrued where the act was done, and the penalty must be prosecuted there."

Morrell vs. Com., 129 Ky. 740.

A plea of "not guilty" instead of an answer must be filed.

Com. vs. Avery, 77 Ky. 625

L. & N. vs. Com., 112 Ky. 640

Section 4028-9, Carroll's Code

Section 4261 — All penal actions must be prosecuted by the Commonwealth's Attorney, (not by the revenue officer).

If a criminal penalty—No jurisdiction.

11. No suit can be brought in a county except where the *service agent resides*, or may be served on an officer at its place of business.

C. & O. vs. Heath, 87 Ky. 651

Sweet vs. Tuttle, 14 N. Y. 465

L. & N. vs. Grimes, 50 Ky. 220

L. & N. vs. Baume, 128 Ky. 90

Carroll's Code, section 71-72.

3 Ky. Law Reporter, 193, (penalty must be heard by the court or due process is denied).

An attorney in Kentucky is jointly liable with his client for procuring an attachment without jurisdiction in the court.

Wood vs. Ware, 50 B. M. 550-8

Cooley on Torts 349

16 Cal. 83—Natoma Water Co. vs. Parker

13 S. W. 87—Finley vs. St. Louis R. R. Co.

12. *Summary Judgment.* The summary judgment in this case where there is no service and no jurisdiction must be sustained by the court. Rule 56.

1. Adjudication that Common law remedy existed is a stare-decisis bar in *Estoppel*.

Sub. b.: "The party asserting a counter claim at any time may move with or without supporting affidavits, or a summary judgment in his favor, and to all or any part thereon."

Sub. d.: "The court must examine the pleadings, interrogate counsel and shall thereupon include the extent what is in controversy. The trial shall be conducted accordingly."

Seagram's Distillers Corp. vs. Monas, 6 U. S. Law. Rep. 370 and cases there cited.

Aetna Life Ins. Co. vs. National Dry Dock Co., 230 Appeals Division 486.

245 N. Y. S. 365

13. *In Federal Courts, in Law issues*, summary judgment is applied. Judgment for the recovery of money—judgment on debentures—judgment on bonds.

U. S. C. 28 — 784

If the defendant is in default, claimant may have a summary judgment sustained. Judgment may be sustained in summary action for part of demand, when there is no dispute, and the balance of demand may be continued for determination.

N. Y. Civil Practice, rule 114 (from which present Federal rule was taken).

If the court fails to sustain *summary judgment* when parties are in default, reversible error.

If the record shows default beyond the statutory limit of six months, the court can grant no relief and the summary judgment may be *sustained as a matter of right..* (Rule 60).

14. *MERITS SURVIVE* trial on injunctive RELIEF, and *judgment void here for want of parties defendants.*

Kappell Industrial Car Co. vs. Portalis & Co.,
205 N. Y. 144

Lowell vs. Lowell, 265 N. Y. 197

Lockhart vs. Leeds, 195 U. S. 127

Buffalo Specialty Co., 217 Fed. 91

Clifton vs. Tomb, 21 Fed. (2) 898

Irving vs. Wright, 219 U. S. 229

298 Fed. Rep. 518

Collins vs. Miller, 252 U. S. 364

Stromberg vs. Arnson, 239 Fed. 891

Louisville Navigation Co. vs. Oyster Commission, 266 U. S. 99

Chicago vs. Kendall, 266 U. S. 95

Norfolk Turnpike Co. vs. Va., 225 U. S. 264

S U M M A R Y

Auditor Must Sue: Attorney General Must Act.

15. *Improper Parties:* The license tax is in reality an excise tax, the right to do something. The Auditor must collect for license taxes, privilege taxes. The 5 per cent import tax, the state contends is an excise tax, and the \$1.04 per gallon, the state claims is another excise tax, the privilege of selling to a retailer by a wholesaler, who must pay the tax. The Auditor must collect all license taxes. Motion of Petitioners April 11th, 1938, and Motion for judgment of February 9th, 1940, must be sustained. No answer or reply or other pleading in denial of merits; order dismissal does not effect the merits, nor strike the petition.

QUESTIONS UNDER THE LAW

The questions therefore under any penalty where there is or is not a penalty of imprisonment, must be submitted to a jury for trial. Does he owe the tax? Can he be penalized? Does he answer? Certainly he does not—he files his plea of NOT GUILTY. How then could a penalty be imposed without a hearing and without a trial, as provided by law? Denying such jury trial the court of course denied a due pro-

cess trial because a jury trial on issues of fact of common law nature must be had, or no due process is awarded—Section 7, Constitution of Kentucky, and this right is a 14th Amendment guarantee.

THE PENALTIES WERE BARRED

Under this monstrous legislation, three excise taxes must be collected—5 per cent for the privilege of manufacturing, 5 per cent if the liquor in travelling, must come into Kentucky to its destination. Now then if it is shipped out of the State and stored, and then shipped back into Kentucky under this law it must pay \$1.04 per gallon—the wholesaler—another excise tax. To that, always the gallon pays two excise taxes, and sometimes *three excise taxes*.

16. Here in this alleged tax the Commonwealth was collecting, *three taxes* on a part of this whiskey. This is what a trial is for in the Federal Courts, and this is what was denied by this Federal trial Judge, by denying a trial on the merits. Some justice; this Honorable Court must allow, in a great free country.

But we think the law, as decided by the Sixth Circuit:

Illinois R. Co. vs R. R. Commission of Ky.,
1 Fed. (2) 805:

“Since we think the requirements of Section 266, Judicial Code (Comp. St. 1243) have been met by the hearing which has been had, and by the filing of this memorandum approved by the three judges, the order presently continuing the restraining order as herein directed, and the preliminary injunction to issue if there is no further showing to be made, will be entered by the District Judge of this district, sitting alone. *He will also pass upon the motion to dismiss the bill.*”

The court as now constituted may consider the grounds of such a motion as they *bear* upon the motion for *injunction*, but can make no order *except to grant or refuse the injunction, or restraining order.*"

The order of dismissal here is signed by three judges out of the district.

17. *The Court of Appeals of Kentucky* in *Asher vs Fordson Coal Co.*, 249 Ky. 498, and the Sixth Circuit Court of Appeals, in *Fordson Coal Co. vs Jackson*, settle the invalidity of the judgment of the court refusing to docket this cause and try out the merits, Martin having been detached from the Internal Revenue Commissioner's office. The one year time having expired voids the judgment in Kentucky, and six months having expired at the time the United States District Court for the Eastern District of Kentucky refused to docket the cause. The Kentucky Court of Appeals and the Circuit Court of Appeals for the Sixth Circuit are agreed.

Kentucky Decision; 501-10 Code makes Judgment void. *Ashen Case*.

"However, it appeared that the judgment in that case (relied upon by the Court of Appeals) had been rendered before the substitution was made, and, under the conclusion that no valid proceeding on the merits could be had until the order was entered (the order of revivorship), writ of error was dismissed, because the judgment was void. It was stated that the case below stood undisposed of—as shown above, the substitution was made in this case before the judgment (while in the Sixth Circuit Court of Appeals the substitution was made after judgment, hence void)."

It is unnecessary to cite authorities on this issue, both the Federal statute and Kentucky Code are sufficient to make any order void thereafter rendered.

18. *Intervention and service of Harry Bayer as Bailee or Trustee is a matter of right*: He was a necessary party, Rule 23 sub. (a and I).

Control by the court of the property is in itself sufficient ground for intervention. If the party is adversely affected by disposition of the property then intervention becomes a matter of right in the trustee.

Louisville Trust Co. vs. Louisville Ry. Co. 174 U. S. 674.

Sec. 777 U. S. C. Title 28—judgment must be on merits, a hearing fully.

The trustee may maintain an independent suit, but is not bound by a Judgment to which he is not a party. Property in his control (Kentucky Code): Cannot be seized.

Wichita Ry. Co. vs Public Utilities, 260 U. S. 48.

The rule in the Federal Court applying here is Rule 13, sub. (h) and rule 38.

19. Action for taxes authorized by Act of 1934-36, section 10.

"A single taxpayer even tho a non resident may bring suit for taxes in Kentucky, for himself or for all others."

Sec. 20-28 Carroll's Code.

Orear case, 23 Law Reporter 1912.

Com. vs Scott 80 Ky. 498.

Com. vs. Wiggins 112 Ky. 252.

Oswald vs Morris 92 Ky. 48.

Commissioners vs Weiss 269, 554.

Newcomb vs Newcomb, 108 Ky. 589. This may be done independent of a special Act.

There was no jurisdiction in the court to entertain a motion from J. W. Martin. Attachments and injunctions are incidental proceedings under the Code and Statute of Kentucky, and if there is not a *main cause of action* there is no jurisdiction in the Court to enforce these incident proceedings.

"Adequate remedy" is defined in words and phrases as an action at common law on the merits.

See Record, Judgment, April 16, 1938, at Louisville, and order Feb. 27, 1940, denying trial.

Respectfully submitted,

GEO. E. WHITMAN.